

**IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

In Re:) Case No. 14-43260-705
) Honorable Charles E. Rendlen, III
EXCAVATING CONTRACTORS, INC.,) Chapter 7
)
Debtor.) MOTION TO DESIGNATE DERRICK
) PEDROTTI AS “DEBTOR” PURSUANT
) TO BANKRUPTCY RULE 9001(5)
)
) Hearing Date: July 30, 2014
) Hearing Time: 9:30 a.m.

**MOTION TO DESIGNATE DERRICK PEDROTTI AS “DEBTOR” PURSUANT TO
BANKRUPTCY RULE 9001(5)**

COMES NOW David A. Sosne, Chapter 7 Trustee (“Trustee”) in the bankruptcy case of Excavating Contractors, Inc. (“Debtor”), by and through its undersigned counsel, and for his Motion to Designate Derrick Pedrotti as “Debtor” Pursuant to Bankruptcy Rule 9001(5) (the “Motion”), states as follows:

1. On April 23, 2014 (the “Petition Date”), Debtor filed its voluntary petition for relief under Chapter 7 of Title 11 of the United States Code, 11 U.S.C. §§ 101 et seq., as amended (the “Bankruptcy Code”).

2. This is a core proceeding under 28 U.S.C. § 157(b). This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue of this case and Motion is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The authority for the relief requested herein are Fed. R. Bankr. P. 9001(5), and E.D. Mo. L.R. 9.01(B)(1).

3. Debtor is a S-Corporation and, to the best knowledge of the Trustee, no longer operates as a going concern. No shareholder, officer or director of the Debtor has been appointed as the responsible party in this case.

4. Bankruptcy Rule 9001(5) provides that “any or all of [the Debtor’s] officers, members of its board of directors . . . a controlling stockholder or member, or any other person in control” may be designated by this Court as the “Debtor” to ensure compliance with the Debtor’s obligations to the Trustee. See Fed. R. Bankr. P. 9001(5).

5. Effectively, Bankruptcy Rule 9001(5) authorizes this Court “to designate a natural person whom [this] court may hold responsible for court orders pertaining to the non-natural debtor” that may otherwise not be subject to discharge revocation, contempt or other penalty for failing to cooperate with the Trustee. See *In re Teknek, LLC*, 2006 WL 2136046*5 (Bankr.N.D.Ill. 2006).

6. Section 521 of the Bankruptcy Code and Bankruptcy Rule 4002 assign the Debtor the affirmative duties to voluntarily disclose information and cooperate with the Trustee in the administration of this bankruptcy proceeding. See 11 U.S.C. § 521 and Fed. R. Bankr. P. 4002.

7. Derrick Pedrotti is the sole shareholder of the Debtor and, to the best belief of the Trustee, the person most knowledgeable about the assets, liabilities and operations of the Debtor.

8. Therefore, the Trustee seeks an order from this Court appointing Derrick Pedrotti as the “Debtor”, as defined in Bankruptcy Rule 9001(5), and the party responsible to perform the duties of the Debtor, as set forth in Section 521 of the Bankruptcy Code and Bankruptcy Rule 4002.

WHEREFORE, Trustee respectfully requests this Court to enter its order designating Doug Hazel as the “Debtor”, as defined in Bankruptcy Rule 9001(5), and the party responsible to perform the duties of the Debtor, as set forth in Section 521 of the Bankruptcy Code and Bankruptcy Rule 4002,; and granting such other and further relief as may be just and proper.

Respectfully submitted,
SUMMERS COMPTON WELLS LLC

Date: July 3, 2014

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via electronic filing in the CM/ECF system of the United States Bankruptcy Court for the Eastern District of Missouri to the parties requesting service by electronic filing. I hereby also certify that a copy of the foregoing was served via United States Mail, first class postage prepaid, on the date of the electronic filing of this document to those individuals and entities not requesting service by electronic filing. The individuals and entities being served electronically or by mail are:

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Date: July 3, 2014

/s/ Marquita Monroe